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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 517

LEWIS W. TWOMBLEY,
Petitioner.

VERSUS

CITY OF LONG BEACH, a California municipal corporation; MURRAY T. COURSON, City Auditor of the City of Long Beach, California; STATE OF CALIFORNIA; and THE STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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September, 1964

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In the
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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Comes now the above named petitioner and petitions this Court to grant Writ of Certiorari and review the opinion of the United States Court of Appeals for the Ninth Circuit dated the 25th day of June, 1964.

The opinion is reported in 333 F.2d 685, Fed. Rep. Advance Sheet dated August 31, 1964, page 685, and said opinion is set forth in full in the Appendix hereof.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

The date of the decree or opinion of the United States Court of Appeals Ninth Circuit is June 25, 1964, and the same was entered and filed on said date.

There has been no rehearing or extension of time to file Petition for Writ of Certiorari.

This action requires a construction of the Submerged Lands Act of 1953, 43 U.S.C.A., Articles 1301-1343.

The United States Court of Appeals for the Ninth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court; or has decided a federal question in a way in conflict with applicable decisions of this Court.

QUESTIONS PRESENTED

The question presented is a controversy between the State of California and the City of Long Beach as to the ownership of the submerged lands incorporated within the City of Long Beach.

The question requires a construction of the Submerged Lands Act of 1953 and as to the rights of the City of Long Beach and/or the State of California to the submerged lands and the oil and gas revenues therefrom. The question presented requires a construction of the Submerged Lands Act, the four different Acts of the State Legislature of the State of California and the admitted factual situation.

The City of Long Beach claims title to the lands it has developed and expended large sums of money providing a harbor and harbor facilities for the benefit of the people of the State of California and for the City of Long Beach and the taxpayers thereof. The question presented requires the Court to determine the effect of an Act of the Legislature of California (1911) granting the submerged lands to the City within the incorporated limits of said City and other Acts thereafter, namely the 1925 Act of the Legislature, the 1935 Act of the Legislature, the 1951 Act of the Legislature and the 1964 Act of the Legislature of the State of California. The question as to the ownership of the submerged lands and the question presented here also, involves a construction of various opinions of the Supreme Court of the State of California, all of which Acts of the Legislature and opinions will be set forth in detail in the Appendix hereto.

The question presented more briefly is:

Can the State of California Grant All of Its Rights to the City of Long Beach in 1911 by Legislative Act and After Oil and Gas Is Discovered Then by Legislative Act Take From the City That Which the City Has Improved and Spent Large Sums Improving and to Which It Acquired Title Both From the State of California by Legislative Act and From the United States by the Submerged Lands Act of 1953?

The constitutional and statutory provision which the case involves are as follows:

(1) Submerged Lands Act, 67 Stats., p. 29, 1953, Title 2, Section 3 thereof.

(2) Amendment Five to the United States Constitution and the portion relied on is as follows:

> "* * * nor be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation."

(3) Amendment Fourteen United States Constitution:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(4) (a) California Statutes of 1911 Chapter 676;

(b) California Statutes of 1925 Chapter 102;

(c) California Statutes of 1935 Chapter 158;

(d) California Statutes of 1951 Chapter 915;

(e) California Statutes of First Extra Session 1956 Chapter 29;

(f) Senate Bill Number 60 as passed by the Senate and approved by the Governor, Chapter 1964;

(referring to the lands involved).

(5) Article Two, Charter of the City of Long Beach adopted in 1923 defining boundary lines of the City of Long Beach, pertinent part as follows:

> "* * * thence southwest along said northwest line of Lot 10 and prolongation thereof to a point three miles distant from the line of ordinary high tide of the Pacific Ocean; thence westerly and parallel to said line of ordinary high tide and three miles distant therefrom to the prolongation southerly of the westerly line of Block 10. * * *"

STATEMENT OF THE FACTS

Prior to 1911 the City of Long Beach, California was incorporated and had within its boundaries the submerged lands involved herein. In 1911 before there was any reason to believe the lands could be used for any purpose other than for a harbor and harbor facilities and fishing and prior to the discovery of oil, the Legislature of California passed an Act which will be set out in the Appendix, but the title to which is as follows:

> "AN ACT GRANTING TO THE CITY OF LONG BEACH THE TIDELANDS AND SUBMERGED LANDS OF THE STATE OF CALIFORNIA WITHIN THE BOUNDARIES OF SAID CITY" (APPROVED MAY 1, 1911).

Thereafter, the City of Long Beach, in complying with the provisions of said Act voted bonds which the taxpayers were required to pay in the amount of approximately $8,250,000, which money was expended in the building of the harbor or improvement of the harbor, construction of breakwaters and carrying out on the part of the City

of Long Beach its duties without any cost to the State of California.

The 1925 Act and the 1935 Act of the Legislature of the State of California, as we view the factual situation, are of no consequence in this appeal.

In 1938 oil and gas was discovered and the lands were found to be exceptionally valuable, and up to this time it is estimated that the lands have produced moneywise one billion dollars, and will produce in the future an additional four and one-half billion dollars.

Upon the discovery of oil, litigation arose as to the rights and title of the City of Long Beach and the State of California and the matter reached the Supreme Court of the State of California and was decided by that Court in July, 1938 in a case styled *City of Long Beach, et al. v. Marshall (People, Intervenor)*, found in 82 Pacific Second Series beginning on page 362. In that case the State of California was represented by the Attorney General of the State and his assistant and all parties interested therein were represented, the cause briefed and submitted to the Supreme Court and after a consideration thereof the Court held that the City of Long Beach owned the fee simple title to the lands involved. The opinion of the Supreme Court was unanimous and refers to the fact that the Charter and Amendment to the Charter, Section 229 (x) was approved by the Legislature in 1937 expressly and unequivocally empowering the City to drill, develop, take and dispose of oil on tidelands owned by it and the Supreme Court of California stated in concluding:

"* * * We are concerned not with the policy of the statute but with its effect; and if the legislature, without knowledge of the hidden treasures in these lands, made improvident grants thereof, it is not within the power of the courts to nullify them."

In the body of the opinion the Supreme Court used this language:

"* * * The argument of the state's 'double fee' is met by the very statutory language which grants the land, for it conveys 'all' the 'right, title and interest' of the state. Whatever the state had by way of title or interest, however divided it may have been, it all passed under the plain words of the grant.

* * * * * * *

"It remains only to point out briefly that the history of tideland grants in this state, and the actions of the various legislatures and the courts in connection therewith, show a general agreement that the tidelands were conveyed to municipalities in fee, subject only to the public trusts and the limitations and reservations specified in the acts; and that until the discovery of these valuable oil rights in the Southern California tidelands no serious doubt was ever expressed as to the title of the municipalities.

* * * * * * *

"* * * The 1937 charter amendment (sec. 229x) approved by the legislature on May 14, 1937 (Stats. 1937, p. 2939) expressly confers a right to drill for oil on tidelands, a meaningless authorization if the city wholly lacked title to the lands or ownership of the minerals."

Therefore, the facts show that the City of Long Beach, as between the State of California and said City, was the

owner of said property from 1911 and to the date of the opinion, namely July, 1938. By the subsequent Acts of the Legislature, including the Act in 1964, the Legislature has sought to take from the City of Long Beach the valuable lands involved and the revenues therefrom, and the City of Long Beach in addition to the $8,250,000 in bond money has spent on the harbor and breakwaters an additional sum in excess of $35,000,000 thereon, and the State of California has not expended any sum in connection therewith but has enjoyed the benefits, without cost, of said harbor, breakwaters and harbor facilities furnished by the City of Long Beach and has taken from the City and has received more than $200,000,000 from the City of Long Beach.

Jurisdiction of the Court in the First Instance

The basis for federal jurisdiction in the first instance in the United States District Court for the Southern District of California is the interpretation of the Submerged Lands Act, a Federal Statute (28 U.S.C., Section 133.

ARGUMENT

The State of California, although it actually had no title as the title was in the United States, granted to the City of Long Beach, California in 1911 by Legislative Act, which Act is set forth in the Appendix herein, the submerged lands within the city limits of the City of Long Beach. The City of Long Beach then voted bonds in the amount of approximately $8,250,000 without any expense

whatsoever to the State of California and improved the harbor, harbor facilities, erected breakwaters and other necessary improvements for said harbor and the taxpayers paid said sum. There was no complaint from the State of California and the City of Long Beach exercised dominion and control over said submerged lands. Thereafter and in 1938 oil was discovered and the City of Long Beach produced oil from said property and the State of California now seeks to take from Long Beach the property involved herein.

In 1947 the Supreme Court of the United States held in the case of *United States* v. *California*, 332 U.S. 19, that the property did not belong and had never belonged to the State of California. Thereafter, the Submerged Lands Act was passed by Congress which in effect granted title to and ownership of the lands beneath navigable waters within the boundaries of the respective states and the natural resources within such lands and waters and the right and power to manage, administer, lease, develop and use said lands and natural resources all in accordance with applicable state law subject to the provisions of said act, recognized, confirmed, established, and vested in and assigned to the respective states or the persons who were on June 5, 1950, entitled thereto under the law of the respective states in which the land is located, and the respective grantees, lessees, or successors in interest thereof. After Congress passed this Act the State of California has continually sought to take all of the lands and benefits from the lands from the City of Long Beach.

The question then we think, should be determined upon what was the right or rights of the City of Long

Beach as of June 5, 1950. In reviewing the Record in this case it will be noted that in 1911 the State of California divested itself of any interest in and to said land and the City of Long Beach relied upon the Act of the Legislature, spent the money of the taxpayers, improved the harbor and harbor facilities as hereinabove set forth, and the State of California has not expended any money with reference to said lands or the harbor located thereon.

Under the Constitution of the State of California, which is Article 4, Section 24, the State is bound by the Act and its provisions only to the extent of and as set forth in the title to said Act. The title to said Act is herein repeated for emphasis sake:

> "AN ACT GRANTING TO THE CITY OF LONG BEACH THE TIDELANDS AND SUBMERGED LANDS OF THE STATE OF CALIFORNIA WITHIN THE BOUNDARIES OF SAID CITY" (APPROVED MAY 1, 1911).

If the State of California had ever had title to the property it divested itself of said title by said Act. Then the Supreme Court of the State of California held without equivocation and without doubt that the City of Long Beach was the owner of the tidelands and submerged lands involved herein or the submerged lands. See *City of Long Beach* v. *Marshall*, 82 P.2d 362. The acts of the State of California are that the State is attempting by legislative acts to adjudicate and determine that it owns these lands. The City of Long Beach owns the lands by reason of the fact that it was entitled under the Submerged Lands Act to take said lands and the lands were in fact granted by the United States Government by said Act to the City of

Long Beach. The City under the terms of the Act itself, the Submerged Lands Act, is a person as defined therein. As between the State of California and the City of Long Beach, the State of California is estopped as a matter of equity to come in after oil was discovered and after the City of Long Beach had developed said property and by its efforts had secured or procured the production of oil from said property. In addition to this, the State of California is further estopped from attempting to claim title to said property after passing an Act granting said property to Long Beach for a valuable consideration. That is the improvement of the harbor and harbor facilities upon which the City of Long Beach has now spent more than $43,000,000 and the State of California has spent nothing.

We feel it is a violation of the Constitution of the United States, the Constitution of the State of California, the laws of the United States and the laws of the State of California to attempt to take from a city its property by legislative enactment without any compensation whatsoever therefor. This violates the Federal Constitution and the Legislature in 1964 by its enactment again attempts to take from the City that which belongs to the City and that which went to the City by a grant from the United States Government.

Nothing is better settled than the rule that the legislature cannot exercise judicial functions. 11 Cal. Jur.2d, page 476, Section 118. Thus the Legislature cannot adjudicate the legal rights of parties. *Miller* v. *McKenna*, 23 Cal.2d 774, 147 P.2d 531. The state has no power to divest or impair vested rights. *Favot* v. *Kingsbury*, 98 Cal. App. 284, 276 Pac. 1083.

Chapter 29, First Extra Session Laws 1956 is nothing more or less than a bold attempt to do just what the settled law says cannot be accomplished by legislation, and a flagrant attempt to exercise judicial functions by legislative enactment. The history of this matter shows that the case of *Mallon* v. *City of Long Beach*, 44 Cal.2d 199, 282 P.2d 481, had been reversed by the Court and was ready for a trial on the merits: that the Act was passed to avoid such judicial action is very clear. It was a deliberate attempt to take the action out of the courts and settle it by legislation, in total and flagrant disregard to property rights of the taxpayers and the parties. It attempts to set and settle the amount due the State at $120,000,000.00 in disregard of the pending case, which was and is purely a judicial function.

It is suggested that Chapter 29 First Extra Session Laws should be declared unconstitutional and void.

With reference to the Act of the Legislature of the State of California 1911, Original Act, with reference to this property, we respectfully call to this Court's attention these pertinent facts:

The Constitution of the State of California, being Article Four, Section Twenty-four, is in words and figures as follows to-wit:

> "Every act shall embrace but one subject which subject shall be expressed in the title. But if any subject shall be embraced in the act which shall not be expressed in its title such act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title: but in such case the act revised or section

> amended shall be re-enacted and published at length as revised or amended and all laws of the State of California and all official writings, and the executive, legislative and judicial proceeding shall be conducted, preserved and published in no other than the English language."

This Constitution, as most state constitutions, requires every act of the Legislature to embrace but one subject, which subject shall be expressed in the title and if any subject shall be embraced in the Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in its title. Therefore, since the title to the 1911 Act is:

> "AN ACT GRANTING TO TH CITY OF LONG BEACH THE TIDELANDS AND SUBMERGED LANDS OF THE STATE OF CALIFORNIA WITHIN THE BOUNDARIES OF SAID CITY" (APPROVED MAY 1, 1911).

therefore, since there was nothing said in the title to the Act the City of Long Beach was not in anywise restricted in its use of said tidelands and submerged lands and could not be thereafter restricted because there was nothing in the title restricting or attempting to restrict the use of said lands. The Circuit Court of Appeals in the case sought to be reviewed states in the body of the opinion that

> "The right of the state to lay claim to surplus trust revenues arose out of the original grant to Long Beach in 1911 * * *."

and the contention of the City is that the original grant was an outright grant without any restrictions or rights

of the State to lay claim to the land or the benefits therefrom.

The District Court of Appeals of the State of California has said with reference to the title in the case of *People* v. *Sterling Refining Co.*, District Court of Appeals, First District, 261 Pac. beginning on page 1080, and in the body of the opinion that Court used this language:

> "In speaking of this constitutional provision, the Supreme Court in Ex parte Liddell, 93 Cal. 633, 29 P. 251, said:
>
> > 'The object of the provision is to prevent legislative abuse—to prevent the passage of acts bearing deceitful and misleading titles. It is intended to protect the members of the Legislature, as well as the public, against fraud; to guard against the passage of bills the titles of which give no intimation to the members of the Legislature or to the people of the matters contained therein.'
>
> "To the same effect, see, also, Cooley's Constitutional Limitations (6th Ed.) 169; Abeel v. Clark, 84 Cal. 228, 24 P. 383; People v. Jordan, 172 Cal. 394, 156 P. 451; Moore v. Williams, 19 Cal.App. 600, 127 P. 509; In re Maginnis, 162 Cal. 200, 121 P. 723."

In the case of *Wallace* v. *Zinman, et al.*, 254 Pac. beginning on page 946 the Supreme Court of California construing the constitutional question with reference to the title of an act said:

> "4. Statutes — Usury Law adopted by initiative method must embrace but one subject, which must be expressed in title (St. 1919, p. lxxxiii; Const. art. 1, Sec. 22, and art. 4 Secs. 1, 24).

"Const. art. 4, Sec. 24, requiring act to embrace but one subject to be expressed in title, is applicable to Usury Law (St. 1919, p. lxxxiii), notwithstanding that such statutes were adopted by initiative method under Const. art. 4, Sec. 1, in view of article 1, Sec. 22, providing that constitutional provisions are mandatory and prohibitory unless expressly declared to be otherwise.

"5. Evidence—It is common knowledge that large number rely solely on title of initiative measure as guide to intelligent voting thereon.

"It is common knowledge that initiative measure is originated by small group who circulate petition requiring signatures of only 8 per cent. of voters, that measure is then placed on ballot, and large number of population rely solely on title as guide to intelligent voting thereon."

In the body of the opinion the Court used this language:

"* * * Section 22 of article 1 of the Constitution reads:

> 'The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.'

"The purpose of this provision was before this court in Ex parte Liddell, 93 Cal. 633, 636, 29 P. 251. In that case, after giving a brief outline of the history of this character of legislation, the court said:

> 'At the present time, however, the Constitutions of many states contain provisions similar to that quoted above. The object of the provision is to prevent legislative abuse—to prevent the passage of acts bearing deceitful and misleading titles. It is intended to protect the members of the Legislature, as well as the public, against fraud; to

> guard against the passage of bills the titles of which give no intimation to the members of the Legislature or to the people of the matters contained therein. Cooley's Constitutional Limitations (6th Ed.) 169'."

Since the City owns the land it has the right to use the funds derived therefrom for any governmental or any city purpose and it is the contention of the City of Long Beach, that is the taxpayers, that the State of California does not have the right to direct that the money be used for any specific purpose, but that the only way there should be or could be any directions is that it be used for city governmental purposes.

The City further most respectfully shows to the Court that the State of California has no right whatsoever to take from the City of Long Beach the funds representing the income from oil and gas revenues although the Legislature has attempted to take the funds from said City which would be tantamount to taking the land itself.

CONCLUSION

It will thus be seen from considering this Petition that the matters involved herein require a construction of the Submerged Lands Act, and in addition thereto that this case involves matters of grave and great importance to the people of the State of California and to the citizens and taxpayers of the City of Long Beach. It is one of great magnitude and one which should be settled as there doubtless will be numerous cases arising under the Submerged Lands Act between various states and various cities and

this Court will note from reading the case of *City of Long Beach, et al.* v. *Marshall (People, Intervenor), supra,* that this same question undoubtedly will, or at least may, arise with reference to many cities mentioned in the opinion wherein the opinion states that the State of California made grants to other cities.

We wish to call to the Court's attention that in this Court there is now pending the case of *United States of America* v. *State of California,* October Term, 1964, Number 5, Original, which was heretofore decided and in which this Court held that the United States owned the tidelands involved in 1947 as reflected by the opinion. See *United States* v. *California,* 332 U.S. 804-805, and *United States* v. *California,* 332 19, at 40; and that the petitioner here has filed Brief of Amicus Curiae and this case could easily be consolidated with this case if *certiorari* is granted and disposed of in the same hearing.

Owing to the nature of the case it is of grave importance to the people, and owing to the questions involved herein and their magnitude, we therefore most respectfully request, petition and pray that this Honorable Court grant *certiorari* herein and review this cause.

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September, 1964

APPENDIX

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18,574

LEWIS W. TWOMBLEY,

Appellant,

vs.

CITY OF LONG BEACH, a California Municipal Corporation; MURRAY T. COURSON, City Auditor of the City of Long Beach, California; STATE OF CALFORNIA; and THE STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA,

Appellees.

[June 25, 1964]

Upon Appeal From the United States District Court for the Southern District of California, Central Division.

Before: BARNES, JERTBERG and MERRILL, Circuit Judges.

MERRILL, Circuit Judge:

The question presented by this appeal is whether the City of Long Beach, California, holds fee title to the submerged lands (lands covered by navigable nontidal waters) within its boundaries, free from any right in the State of California.

[APPENDIX]

Appellant, as a citizen, resident and taxpayer of the City of Long Beach, has brought this action against Long Beach and the State of California, asserting that Long Beach has such fee title, but is wrongfully paying to the State a portion of its revenue from such lands under the erroneous assumption that it is legally obligated to do so. The complaint sought an injunction against further payments to the State and a declaration of Long Beach's title. Appellant asserts that the City's title was derived from the United States by the provisions of the Submerged Lands Act, 67 Stats. 29 (1953), chapter 31, 43 U.S.C. §§ 1301-1343. He invokes Federal jurisdiction under 28 U.S.C. §1331, upon the ground that the interpretation of an Act of Congress is essential to his claim.

The action was dismissed by the District Court of the Southern District of California, Central Division, for failure of the complaint to state a claim. This appeal followed.

Prior to *United States* v. *California,* (1947) 332 U.S. 19, it had generally been regarded as the law that title to submerged lands lay in the several states. By that decision title was held to be in the United States. The rights and investments under innumerable grants and leases from the states were placed in peril.

Congress dealt with the situation by the Submerged Lands Act, *supra,* Section 1311(a) states that "title to and ownership of the land beneath the navigable waters within the boundaries of the respective States, and the natural resources within such land and waters * * * is recognized, confirmed, established and vested in and assigned to the respective States or the persons who were, on June 5, 1950, entitled thereto under the law of the respective States in which the land is located * * *."

Appellant's contention here is that by virtue of a grant from the State of California, Long Beach was, on June 5, 1950, the person entitled to the submerged lands within its boundaries.

By Act of the State Legislature, May 1, 1911, Long Beach was granted "all the right, title and interest of the State of California held by said State by virtue of its sovereignty in and to all the tidelands and submerged lands, whether filled or unfilled, within the present boundaries of said City * * *." The grant provided, however, that it was "in trust for the uses and purposes and upon the express conditions following." It was then specified that the lands so granted "shall be used by said City * * * solely for the establishment, improvement and conduct of a harbor" including facilities for the promotion and accommodation of commerce and navigation.

By later enactments the nature of the trust and the limitations upon use that it constituted were somewhat modified. In *City of Long Beach* v. *Morse*, (1947) 31 Cal.2d 254, 188 P.2d 17, it was held that revenues derived from the lands were also subject to the trusts imposed.

By Act of June 6, 1951, the State declared "free from the public trust," and thus took to itself, one-half of the oil revenues and all "dry gas" revenue derived by Long Beach from the lands so granted. That Act found and determined as fact that Long Beach, since 1939, had produced large quantities of oil, gas and other hydrocarbon substances from the lands conveyed and had derived substantial revenue therefrom; that the expenditure of more than the sums left remaining subject to the trust "would be economically impracticable, unwise and unnecessary."

Subsequently, in *Mallon* v. *City of Long Beach*, (1955) 44 Cal.2d 199, 282 P.2d 481, the Supreme Court of California held that this statutory enactment had the effect of creating a resulting trust in favor of the State of California, and that the State and not Long Beach was entitled to the revenues freed from the statutory trusts.

Finally, by chapter 29 of the Statutes of 1956, the California State Legislature approved and directed a settle-

ment between Long Beach and the State, and directed that subject to certain costs the City should pay over monthly to the State of California one-half of the oil revenue and all dry gas revenue derived from submerged lands.

Appellant contends that California had no right to impose conditions or trusts in its grant to Long Beach since it had at that time no title to the submerged lands. He contends that the City's title came not from California but directly from the United States; that California's only function in all of this was to point the finger at the person entitled, and only the United States, which has not done so, could impose restrictions.

Furthermore, appellant contends, California law does not establish the State's right to enforce the conditions imposed. As we understand appellant's position, he asserts that the law of California (as it existed prior to *United States* v. *California, supra*) respecting its right and title under the grant to Long Beach, is laid down in *City of Long Beach* v. *Marshall,* (1938) 11 Cal.2d 609 82 P.2d 362. There, in confirming Long Beach's title to the land, says appellant, the decision established California law to the effect that upon California's admission to the Union it had acquired title to submerged lands by virtue of its sovereignty, subject to certain public trusts; that by its grant to Long Beach it had parted with all proprietary ownership, retaining only that title which it had felt it held in trust for the public. By *United States* v. *California*, argues appellant, it was established that California had neither proprietary nor trust ownership. By the Submerged Lands Act, appellant argues, the United States granted proprietary ownership to California but imposed no public trust duties upon the State. Appellant reasons that the "trust" ownership which the State had retained was, under *United States* v. *California, supra*, in fact retained for the benefit of the United States which had not imposed trust conditions when

it "granted" the land to Long Beach. Thus the trust conditions imposed by the State were terminated.

We cannot agree with appellant's position. It is clear from the Act itself and from legislative history that Congress, by the Submerged Lands Act, wished to confirm and not to undo or override arrangements theretofore made by the several states.

The majority report upon the bill, which became the Submerged Lands Act, Volume 2, U.S. Code Congressional and Administrative News, 83rd Congress, 1st Session, 1953, page 1385, 1423, states in part:

> "We are certain that until the Congress enacts a law consonant with what the states and the Supreme Court believed for more than a century was the law, confusion and uncertainty will continue to exist. Titles will remain clouded and years of vexations and complicated litigation will result."

Therefore, the report states at page 1422, "the Congress should now remove all doubt about the title by ratifying and confirming the titles long asserted by the various states."

The Act itself, in defining "grantees" and "lessees," §1301(d), states: "Provided, however, that nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein, and in their respective grants from the State or its predecessor sovereign."

In dismissing the action the district court states:

> "Plaintiff's technical argument fails to answer the point repeatedly made by defendants that Congress intended by the Submerged Lands Act to 'confirm' whatever conveyance of title the states had already made. Plaintiff cannot rely on the statutory convey-

ances made to Long Beach, while at the same time insisting that the conditions of trust contained in the conveyances be deleted."

We agree.

Appellant argues that even if the Submerged Lands Act is construed to confirm the pre-existing status of the City of Long Beach's ownership, subsequent California legislation appropriating part of the revenue produced is ineffective. This is so, appellant contends, because the statute (Cal. Stats. 1951, ch. 915) was enacted after *United States* v. *California* but before the Submerged Lands Act, a period during which California lacked ownership of the land.

It is true that California's decision to free certain revenues from the public trust was made subsequent to June 5, 1950. However, it is clear from *Mallon* v. *City of Long Beach, supra,* and *City of Long Beach* v. *Morse, supra,* that the right of the State to lay claim to surplus trust revenue arose out of the original grant to Long Beach in 1911, and that the Act of 1951 amounted to no more than a varying of the terms of the original trust as to the manner in which trust property was to be put to public use. The Act of 1951, then, did not impinge upon rights of Long Beach as of June 5, 1950. It dealt with trust property as to which Long Beach then was and had always been accountable to the State in accordance with such directions as the State from time to time should make.

Finally, appellant contends that even assuming California had the general power to impose trusts and conditions, it could not do so in the area of commerce and navigation, since the United States in the Submerged Lands Act itself, §1314, has expressly retained its powers of regulation and control of such lands and navigable waters "for the constitutional purposes of commerce, navigation * * *."

Even assuming merit in this contention (which we doubt) it cannot aid appellant. If the trust were illegally

created, or the carrying out of the trust purposes become illegal after creation, Long Beach would have lost its sole claim to right as the State's grantee and would hold all revenues for the State on a resulting trust. See 3 Scott, Trusts, §§335, 345.3 (2d Ed.); 4 Scott, *supra*, §422.

Judgment affirmed.

APPENDIX "B"

STATUTE OF CALIFORNIA

Stats. 1925, p. 235; Stats. 1935, p. 793

by an act entitled "an act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions," approved April 28, 1925, as amended by an act entitled "An act to amend Section 1 of an act entitled 'An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions,' approved April 28, 1925, relating to the use of such tidelands and submerged lands," approved May 7, 1935, to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by said acts.

[Approved by Governor June 6, 1951. Filed with Secretary of State June 6, 1951.]
In effect September 22, 1951

FINDING AND DETERMINATION

The people of the State of California do enact as follows:

Section 1. It is hereby found and determined: That the City of Long Beach since 1939 has produced and is now producing large quantities of oil, gas and other hydrocarbon

substances from lands conveyed to said city by an act entitled "An act granting to the City of Long Beach the tidelands and submerged lands of the State of California within the boundaries of the said city," approved May 1, 1911, and by an act entitled "An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions," approved April 28, 1925, as amended by an act entitled "An act to amend Section 1 of an act entitled 'An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions,' approved April 28, 1925, relating to the use of such tidelands and submerged lands," approved May 7, 1935. That from the revenue derived therefrom, said city has constructed upon said lands, wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, at a cost of approximately thirty-five million dollars ($35,000,000). That said city has available and unexpended approximately seventy-five million dollars ($75,000,000), also derived from said source, for the uses and purposes required by said acts, and is now receiving and will continue to receive for many years approximately twenty-four million dollars ($24,000,000) per annum from said source. That, in addition thereto, said city obtains large quantities of "dry gas" derived from natural gas produced from said lands, which is sold by said city to domestic and other consumers. That by reason of the already large expenditure on such lands for the uses and purposes required by said act, the large additional sums available and to become available throughout the years for such purposes, the expenditure of more than a total of fifty per centum (50%) of such revenue, received and unexpended and hereafter to become available for such uses and purposes, would be economically impracticable, unwise and unnecessary. That fifty per centum (50%) of all revenue heretofore derived and unexpended, and to be

derived, by the City of Long Beach from oil, gas and other hydrocarbon substances, other than "dry gas," produced from lands conveyed by said acts, is no longer required for navigation, commerce and fisheries, nor for such uses, trusts, conditions and restrictions as are imposed by said acts. That none of the revenue heretofore derived, and to be derived, by said city from "dry gas" obtained from said lands is any longer required for navigation, commerce and fisheries, nor for such uses, trusts, conditions and restrictions as are imposed by said acts.

"DRY GAS"

For the purposes of this act, "dry gas" is defined to mean the gas directly produced from wells, which contains one-half of a gallon or less of recoverable gasoline per 1,000 cubic feet, or from which gasoline has been removed by processing.

DECLARATION OF FREEDOM FROM PUBLIC TRUST, ETC.

Sec. 2. That fifty per centum (50%) of all revenue heretofore derived and unexpended, and to be derived, by the City of Long Beach from oil, gas and other hydrocarbon substances, other than "dry gas," produced from lands conveyed by said above-entitled acts is hereby declared to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by any of said above-entitled acts. That all of the revenue heretofore derived, and to be derived, by said city from "dry gas," obtained from said lands is hereby declared to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by any of said above-entitled acts.

APPENDIX "C"

ARTICLE II

CHARTER OF THE CITY OF LONG BEACH ADOPTED IN 1923

Description of the boundary lines of the City of Long Beach.

* * * (pertinent part only)

* * * thence southwest along said northwest line of Lot 10 and prolongation thereof to a point three miles distant from the line of ordinary high tide of the Pacific Ocean; thence westerly and parallel to said line of ordinary high tide and three miles distant therefrom to the prolongation southerly of the westerly line of Block 10. * * *

APPENDIX "D"

STATUTES OF 1911.

CHAPTER 676.

An act granting to the city of Long Beach the tidelands and submerged lands of the State of California within the boundaries of the said city.

[Approved May 1, 1911.]

The people of the State of California, represented in senate and assembly, do enact as follows:

Section 1. There is hereby granted to the city of Long Beach, a municipal corporation of the State of California, and to its successors, all the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all the tide lands and submerged lands, whether filled or unfilled, within the present boundaries

of said city, and situated below the line of mean high tide of the Pacific ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit:

(a) That said lands shall be used by said city and by its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatsoever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the State of California and with the requirements of commerce or navigation at said harbor;

(b) That said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the State of Calfornia shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the State of California;

(c) That in the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph *(a)*, no discrimination in

rates, tolls, or charges, or in facilities, for any use or service in connection therewith shall ever be made, authorized or permitted by said city or by its successors;

Reserving, however, in the people of the State of California the absolute right to fish in the waters of said harbor, with the right of convenient access to said waters over said lands for said purpose.

APPENDIX "E"

STATUTES OF 1925.

CHAPTER 102.

An act granting certain tidelands and submerged lands of the State of California to the city of Long Beach upon certain trusts and conditions.

[Approved by the Governor April 28, 1925.]

The people of the State of California do enact as follows:

Section 1. There is hereby granted to the city of Long Beach, a municipal corporation of the State of California, and to its successors, all of the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all of the tidelands and submerged lands, whether filled or unfilled, bordering upon, under, and situated below the mean high tide line of the Pacific ocean, or of any harbor, estuary, bay or inlet, which are within the corporate limits of said city, to be forever held by said city, and by its successors, in trust for the uses and purposes and upon the express conditions following to wit:

(a) That none of said lands shall be used or devoted to any purposes other than public park, parkway, highway, playground, the establishment, improvement and conduct of a harbor and the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other

utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation; and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatsoever; *provided, however,* that nothing herein contained shall be so construed as to prevent the granting or use of easements, franchises or leases for limited periods, or rights of way in, under, over or across said tidelands or submerged lands for power, telephone, telegraph or cable lines or landings, sewage disposal conduits, wharves and other public uses and purposes consistent with the trusts upon which said lands are held.

(b) That said lands devoted to the conduct of a harbor shall be improved by said city without expense to the state and such harbor shall always remain a public harbor for all purposes of commerce and navigation, and the State of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the State of California.

(c) That in the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph *(a)*, no discrimination in rates, tolls or charges, or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or by its successors.

(d) The absolute right to fish in the waters of the Pacific ocean over said tidelands and submerged lands, with the right of convenient access to said waters over said lands for said purpose is hereby expressly reserved to the people of the State of California.

APPENDIX "F"

STATUTES OF 1935

Chapter 158

An act to amend section 1 of an act entitled "An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions," approved April 28, 1925, relating to the use of such tidelands and submerged lands.

[Approved by the Governor May 7, 1935. In effect September 15, 1935.]

The people of the State of California do enact as follows:

Section 1. Section 1 of the act cited in the title hereof, is hereby amended to read as follows:

Section 1. There is hereby granted to the City of Long Beach, a municipal corporation of the State of California, and to its successors, all of the right, title and interest of the State of California, held by said State by virtue of its sovereignty, in and to all of the tidelands and submerged lands, whether filled or unfilled, bordering upon, under and situated below the mean high tide line of the Pacific Ocean, or of any harbor, estuary, bay or inlet, which are within the corporate limits of said city, to be forever held by said city, and by its successors, in trust for the uses and purposes and upon the express conditions following, to-wit:

(a) That none of said lands shall be used or devoted to any purposes other than public park, parkway, highway, playground, the establishment, improvement and conduct of a harbor and the construction, maintenance and operation thereof of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation; and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part

thereof, to any individual, firm or corporation for any purpose whatsoever; provided, however, that nothing herein contained shall be so construed as to prevent the granting or use of easements, franchises or leases for limited periods, or rights of way in, under over or across said tidelands or submerged lands for power, telephone, telegraph or cable lines or landings, sewage disposal conduits wharves and other public uses and purposes consistent with the trusts upon which said lands are held, or the leasing or use of such tidelands or submerged lands for limited periods for the construction, maintenance, and operation of nonprofit benevolent and charitable institutions organized and conducted for the promotion of the moral and social welfare of seamen, naval officers and enlisted men, and other persons engaged in and about the harbor and commerce, fishery, and navigation.

(b) That said lands devoted to the conduct of a harbor shall be improved by said city without expense to the State and such harbor shall always remain a public harbor for all purposes of commerce and navigation, and the State of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the State of California.

(c) That in the management, conduct, or operation of said harbor, or any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls or charges, or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or by its successors.

(d) The absolute right to fish in the waters of the Pacific Ocean over said tidelands and submerged lands, with the right of convenient access to said waters over said lands for said purpose is hereby expressly reserved to the people of the State of California.

APPENDIX "G"

CHAPTER 29

An act relating to the tide and submerged lands conveyed in trust to the City of Long Beach and the revenues derived therefrom and in connection therewith providing for fixing and determining the respective rights and interests of the State of California and the City of Long Beach in and to revenue from hydrocarbon substances extracted or derived from tide and submerged lands conveyed in trust to the City of Long Beach as affected by Chapter 915 of the Statutes of 1951; authorizing the Attorney General and the City of Long Beach to enter into stipulations with respect thereto; clarifying the uses of such tideland hydrocarbon revenues as were unaffected by said act of 1951; providing for State Lands Commission action in connection with said lands; and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 13, 1956. Filed with Secretary of State April 13, 1956.]
In effect immediately

The people of the State of California do enact as follows:

Section 1. As used in this act:

(a) "Long Beach tidelands" means those certain tide and submerged lands heretofore conveyed to the City of Long Beach upon certain trusts and conditions by Chapter 676, Statutes of 1911, Chapter 102, Statutes of 1925 and Chapter 158, Statutes of 1935.

(b) "Oil revenue" means the net proceeds received by the City of Long Beach from the sale of oil, gas and other hydrocarbon substances (other than dry gas) derived from the Long Beach tidelands, after deducting moneys expended for the extraction and sale thereof and for the satis-

faction of obligations attributable to such extraction or sale; "oil revenue" also includes the net receipts from the sale of property used in such extraction or sale, the cost of which has been or may be defrayed from proceeds from such hydrocarbon substances.

(c) "Dry gas" means the gas directly produced from wells, which contains one-half (½) of a gallon or less of recoverable gasoline per 1,000 cubic feet, or from which gasoline has been removed by processing.

(d) "Dry gas revenue" means the reasonable wholesale market value of dry gas derived from, or attributable to production from, said Long Beach tidelands and received into the system of the municipal gas department of said City of Long Beach, and the net receipts to the City of Long Beach from the sale of tideland dry gas as such and which is not received into said system.

(e) "Tideland trust funds" means the Public Improvement Fund, Harbor Revenue Fund, Tideland Oil Fund and Harbor Reserve Fund in the City Treasury of the City of Long Beach, as said funds are presently established by the charter of said city.

(f) "Subsidence costs" means costs expended by the City of Long Beach with the prior approval of the State Lands Commission to remedy and protect against the effects of subsidence of the land surface within the boundaries of the Long Beach Harbor District (as such boundaries are defined on April 1, 1956) and within the boundaries of the Long Beach tidelands situated outside of said harbor district. "Subsidence costs" shall not include moneys expended for the construction or reconstruction of bridges, nor any subsidence expense directly incurred for continued hydrocarbon production and deductible under subdivision (b) of this section.

Sec. 2. It is hereby found and determined:

(a) In that certain act entitled "An act declaring portions of revenue derived from lands conveyed to the City of Long Beach by an act entitled 'An act granting to the City of Long Beach the tidelands and submerged lands of the State of California within the boundary of the said city,' approved May 1, 1911, and by an act entitled 'An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions,' approved April 28, 1925, as amended by an act entitled 'An act to amend Section 1 of an act entitled "An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions," approved April 28, 1925, relating to the use of such tidelands and submerged lands,' approved May 7, 1935, to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by said acts," approved June 6, 1951, the Legislature declared fifty per centum (50%) of all revenue theretofore derived and unexpended, and thereafter to be derived, by the City of Long Beach from oil, gas and other hydrocarbon substances other than dry gas produced from the Long Beach tidelands, and all of the revenue theretofore and thereafter derived from dry gas from said tidelands, to be free from the public trust for navigation, commerce and fisheries and from such uses, trusts, conditions and restrictions as were imposed by said acts of 1911, 1925 and 1935. On April 5, 1955, in the case of Mallon v. City of Long Beach, 44 Cal. 2d 199, the Supreme Court of California held that said act of 1951 effected a partial revocation of the trust created by said acts of 1911, 1925 and 1935 and resulted in a reversion to the State of California of the sums thus released from the trust, the City of Long Beach therefore holding said sums upon a resulting trust in favor of the State. Said Mallon case was thereafter remanded to the superior court

for further proceedings and is now pending in said court awaiting trial on the merits or other disposition. Following said Mallon decision, the State instituted litigation against said city with the objective of recovering those moneys and assets declared by the Supreme Court to be held in resulting trust, to recover judgment for the amount of such moneys and assets as had been theretofore spent by said city and to enjoin the expenditure of other Long Beach tideland hydrocarbon revenues for purposes not authorized by said acts of 1911, 1925 and 1935. As a result of stipulations between the Attorney General and the City of Long Beach, there have been impounded in the hands of said city securities at par and cash aggregating approximately one hundred eleven million dollars ($111,000,000), subject to the additional impoundment of certain future income from oil and dry gas, all of said impounded assets to be held intact by said city pending the final determination of said litigation. The City of Long Beach asserts and, in the absence of a compromise settlement and adjustment of the claims of the State against said city, intends to maintain and to litigate various defenses against said claims. In addition, said city claims certain credits or offsets against the claims of the State by reason of the expenditure of tideland hydrocarbon revenues for protective and remedial works occasioned by land subsidence and by reason of general tax revenues expended by said city upon the Long Beach tidelands. Under existing circumstances, disposition of said impounded funds and determination of the respective rights of the State and the city in the premises cannot be made except by extensive, complicated and time-consuming litigation, possibly including a lengthy court-supervised accounting, while the impounded funds will remain in a condition of enforced idleness. The continuance of the existing controversies between the State and the City of Long Beach, as well as the enforced idleness of the impounded funds, is contrary to the best interests of the people of this State, including the inhabitants of

the City of Long Beach. A purpose of state-wide interest and benefit will be served by the determination of the respective rights and interests of the city and the State in and to past and future hydrocarbon revenues derived from the Long Beach tidelands. Such determination will so fix and clarify the respective entitlement of the State and the city as to permit the early termination of the pending litigation by means of stipulations between the State and city and, so far as necessary or appropriate, through the entry of court orders, decrees and judgments. Such a disposition of the litigation will permit early liberation and utilization of the impounded sums for urgently needed public purposes and will avoid the public detriment incident to protracted litigation between the State and one of its major municipalities.

(b) As a result of said Mallon decision, other questions have arisen as to legally permissible purposes for the expenditure of hydrocarbon revenues from the Long Beach tidelands other than those specified in said act of 1951 as being freed from the tidelands trust. Under existing circumstances such questions must await determination in the litigation now pending between the State and the city. Until that time, the City of Long Beach is prevented from initiating and continuing numerous worth-while projects in and about the Long Beach tidelands which are or may be reasonably related to, and connected with, the purposes of the trusts upon which said lands were conveyed to said city. The trust purposes set forth in said acts of 1911, 1925 and 1935 were prescribed prior to the discovery of hydrocarbon deposits in the granted lands and were therefore conceived primarily as land use purposes. These purposes require restatement in view of the subsequent yield of substantial monetary revenues therefrom. It is to the public interest that the Legislature, to the extent permitted by the State Constitution, set forth the purposes of said trust in greater detail than heretofore, to the end that said pur-

poses may be fulfilled without the delays incident to protracted litigation. To the extent that the Constitution may prevent the expenditure of revenues (other than those payable to the State of California hereunder) for public purposes desired by the City of Long Beach, it is the belief of the Legislature that the Attorney General and said city should seek judicial determinations further defining said city's rights and duties in the premises.

(c) Some uncertainty exists as to the exact location of the boundaries of the Long Beach tidelands. Some uncertainty also exists as to whether certain wells in the Long Beach Harbor District have been and are producing oil, gas, and other hydrocarbon substances or dry gas from Long Beach tidelands or have been and are producing such substances from other land owned by the City of Long Beach. To settle these uncertainties will require the collection of a considerable amount of information and data, the conduct of surveys, and possible litigation.

(d) It is in the interest of the people of this State, including the inhabitants of the City of Long Beach, to declare by this act the amount of oil and dry gas revenue received or held by said city on and before January 31, 1956, for the use and benefit of the State of California free from the public trust for navigation, commerce and fisheries and from such uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935 heretofore referred to, irrespective of these uncertainties, but such declaration should not preclude appropriate resolution, by judicial determination or otherwise, of these uncertainties for the purpose of determining revenues to be accounted for by said city after January 31, 1956.

The total amount of oil revenue and dry gas revenue received or held by the City of Long Beach for the use and benefit of the State of California free from the public trust for navigation, commerce and fisheries and from such

uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935 heretofore referred to, to and including January 31, 1956, is hereby found to be and fixed at the sum of one hundred twenty million dollars ($120,000,000).

Sec. 3. The Attorney General and the City of Long Beach are hereby authorized to enter into an appropriate stipulation or stipulations as may be necessary to finally determine any and all claims, demands, or causes of action as between the City of Long Beach and the State of California and arising out of, and in connection with, or seeking to enforce any obligation of the City of Long Beach to account for or to pay oil revenue and dry gas revenue to or for the benefit of the State of California under this act or the acts of 1911, 1925 and 1935 as modified by the act of 1951 and by this act and for such other purposes as may be authorized or required by this act. In addition to the provisions required by this act, the stipulation may provide for other matters necessary to determine such claims, demands, or causes of action. The stipulation shall provide that the City of Long Beach shall pay the amount agreed upon in the stipulation, which shall in no case be less than one hundred twenty million dollars ($120,000,000), to the State Controller, together with interest and other increment from investments and deposits thereof received by said city between February 1, 1956, and the date of payment. Said payment shall be made in the form and manner and at the time hereinafter prescribed. Said payment shall be deposited in the State Treasury.

Sec. 4. (a) The stipulation shall provide that the payment prescribed by Section 3 of this act shall be accomplished by the transfer of United States securities and cash from the tideland trust funds * * *.

(d) The construction, reconstruction, repair and maintenance of that certain small-boat harbor project known

as the Marina located adjacent to Alamitos Bay, together with structures and other facilities incidental thereto;

(e) The acquisition of property or the rendition of services reasonably necessary to the carrying out of the foregoing uses and purposes.

Sec. 8. (a) On or before October 1st of each year, the City of Long Beach shall cause to be made and filed with the State Lands Commission a detailed statement of all expenditures of oil revenue other than that required in the stipulation provided for in this act to be paid to the State, including obligations incurred but not yet paid. Said statements shall cover the fiscal year preceding its submission and shall show the project or operation for which each such expenditure or obligation is made or incurred.

(b) In addition to the other powers and duties specifically delegated to it by this act, the State Lands Commission shall have general responsibility in connection with the interests of the State under this act and the acts cited in subdivision (a) of Section 2 hereof, including authority to examine financial and operating records relating to the production and sale of hydrocarbon products from the Long Beach tidelands and to conduct such other investigations and studies as it may deem necessary in connection therewith.

Sec. 9. Any decree or judgment entered on the stipulation provided for in this act shall be final as to any and all claims, demands or causes of action as between the City of Long Beach and the State of California and arising out of, in connection with, or seeking to enforce any obligation of the City of Long Beach to account for or to pay oil revenue and dry gas revenue to or for the benefit of the State of California under this act or any of the aforesaid acts, which claims, demands or causes of action accrued on or before January 31, 1956; otherwise the powers of the State of California over the Long Beach tidelands

and over the grants evidenced by the acts of 1911, 1925 and 1935, as modified by the act of 1951 and by this act, including oil revenue and dry gas revenue received before or after January 31, 1956, and unexpended for trust purposes, and still subject to the public trust for navigation, commerce and fisheries and to the uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935, are hereby expressly reserved. Notwithstanding the foregoing provisions of this section, any net proceeds payable to said city prior to February 1, 1956 on account of extraction, production or sale of hydrocarbon substances derived from the Long Beach tidelands, and not received by said city prior to said date, shall, when and if ascertained and received, be accounted for and distributed in accordance with the provisions of Section 5 of this act.

APPENDIX "H"

(SENATE BILL #60, AS PASSED BY THE STATE AND APPROVED BY THE GOVERNOR)

CHAPTER _____ 1964

An act relating to the tidelands and submerged lands granted by the State to the City of Long Beach and the revenues therefrom.

The people of the State of California do enact as follows:

Section 1. As used in this act:

(a) "Long Beach tidelands" means those certain tide and submerged lands, whether filled or unfilled, heretofore conveyed to the City of Long Beach upon certain trusts and conditions by Chapter 676, Statutes of 1911, Chapter 102, Statutes of 1925, and Chapter 158, Statutes of 1935.

(b) "Oil revenue" means the net proceeds received by the City of Long Beach from the sale or disposition of

oil, gas and other hydrocarbon substances (other than dry gas) derived from, or allocated or assigned to, the Long Beach tidelands, including advance payments, after deducting moneys expended for the extraction and sale or disposition thereof and conducting repressuring operations and for the satisfaction of obligations attributable to such extraction or sale or disposition. "Oil revenue" also includes the net receipts from the sale of property used in such extraction or sale or disposition, the cost of which has been or may be defrayed from proceeds from such hydrocarbon substances. "Oil revenue" shall not include the net proceeds from the sale or disposition of oil, gas and other hydrocarbon substances derived from, or allocated or assigned to, the Alamitos Beach Park Lands.

(c) "Dry gas" means the gas directly produced from wells, which contains one-half (½) of a gallon or less of recoverable gasoline per 1,000 cubic feet, or from which gasoline has been removed by processing.

(d) "Dry gas revenue" means the reasonable wholesale market value of dry gas derived from, or allocated or assigned to, or attributable to production from, or allocated or assigned to, said Long Beach tidelands and received into the system of the municipal gas department of said City of Long Beach, and the net receipts to the City of Long Beach from the sale of tideland dry gas as such and which is not received into said system.

(e) "Subsidence costs" means costs expended by the City of Long Beach with the prior approval of the State Lands Commission to remedy or protect against (1) the effects of subsidence of the land surface, heretofore or hereafter occurring, within the boundaries of the Long Beach Harbor District (as such boundaries were defined on April 1, 1956) and within the boundaries of the Long Beach tidelands situated outside of said Long Beach Harbor District, and (2) the effect of subsidence of the land surface, here-

after occurring, within any other portion of the city, which may be attributable, in whole or in part, as determined by the State Lands Commission, to production from the Long Beach tidelands. The cost of repressuring operations shall not be considered a "subsidence cost," but shall be considered a cost of production, which shall be a deductible expense for the purpose of determining "oil revenue" under subdivision (b) of this section. "Subsidence costs" shall not include any costs deductible for the purpose of determining "oil revenue" under subdivision (b) of this section.

(f) The "undeveloped portion of the Long Beach tidelands" means the following described lands:

Beginning at the intersection of the northwesterly line of Block 50 of Alamitos Bay Tract as per map recorded in Book 5, page 137 of maps in Official Records of Los Angeles County, with the mean high tide line of San Pedro Bay thence S. 32° 03′ 00″ W. 18,228.31 feet more or less along the southwesterly prolongation of said northwesterly line of Block 50 to the seaward boundary of the City of Long Beach (as such boundary was defined as of March 1, 1964); thence in a northwesterly direction along said seaward boundary of the City of Long Beach to its intersection with the easterly boundary of the Long Beach Harbor District (as such boundary was defined on April 1, 1956); thence along said easterly boundary N. 17° W. 14,794 feet more or less, thence N. 52° 36′ 17″ west 170 feet more or less to the easterly line of the land described as Parcel "A" under that certain contract executed by the City of Long Beach and the Board of Harbor Commissioners of the City of Long Beach, dated March 12, 1947; thence northerly along said easterly line 4,123 feet to the northerly line of said Parcel "A"; thence westerly along said northerly line to the southerly prolongation of the centerline of Pine Avenue 80 feet wide as per map of the Townsite of Long Beach recorded in Book 19, page 91 et seq. Miscellaneous Records

of said County; thence northerly along said southerly prolongation to said mean high tide line thence in a southeasterly direction along said mean high tide line to the point of beginning, containing 6,100 acres more or less.

(g) "Person" means and includes any firm, corporation, association, partnership, or natural person.

(h) "Contractors' agreement" means and includes any contract, royalty arrangement or other agreement between the City of Long Beach (or any department, board or agency thereof) and any person or persons relating to the drilling for, developing, extracting, processing, taking or removing of oil, gas, and other hydrocarbons derived from, or allocated or assigned to, the undeveloped portion of the Long Beach tidelands or the estimated productive portion thereof (other than unit agreements, unit operating agreements and cooperative agreements authorized by Sections 6879 or 7058 of the Public Resources Code).

(i) "Alamitos Beach Park Lands" means those tidelands and submerged lands, whether filled or unfilled, described in that certain Judgment After Remittitur in The People of the State of California v. City of Long Beach, Case No. 683824 in the Superior Court of the State of California for the County of Los Angeles, dated May 8, 1962, and entered on May 15, 1962 in Judgment Book 4481, at page 76, of the Official Records of the above entitled court.

Sec. 2. It is hereby found and determined:

(a) Since the enactment of Chapter 29, Statutes of 1956, First Extraordinary Session, exploration has disclosed the existence of additional deposits of oil, gas and other hydrocarbons in and under the Long Beach tidelands which should be developed for the benefit and profit of the State of California.

(b) Such development will result in very substantial augmentations of the oil revenue currently received from

the Long Beach tidelands. By reason of such augmentations, as well as previous expenditures of trust revenues for the construction of improvements within the City of Long Beach both within and without the Harbor District of said city, the continued expenditure in the future by the city of oil revenues in the percentage heretofore provided, for the uses and purposes required by law would be economically impracticable, unwise and unnecessary. Economically practicable, wise and necessary expenditures of oil revenue by the City of Long Beach are limited to the purposes hereinafter provided, and to the amounts hereinafter provided to be retained by the City of Long Beach. By reason of the increased amount of oil revenue hereinafter provided to be paid over to the State free from the public trust for navigation, commerce, and fisheries and from such uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935, it is necessary and desirable that the State have increased control over oil and gas production operations and standards as hereinafter provided.

(c) It is likewise imperative that such oil, gas and other hydrocarbons be produced with all measures necessary or proper in the interest of preventing, arresting or ameliorating any subsidence of the surface of any lands in the vicinity, which may be attributable to such production; provided, however, that nothing in this act shall be construed as an admission by the State of Califo[illegible] or the City of Long Beach that any such subsidence was in fact caused by such production, nor shall anything in this act be admissible in any proceeding as evidence of such causation.

(d) By Chapter 2000, Statutes of 1957, the Legislature authorized the State Lands Commission to bring any actions necessary to determine the boundaries of the Long Beach tidelands. In response to this legislation, the State of California in 1960 instituted an action against the city in the Superior Court of the State of California, County of Los

Angeles, Action No. 747562, for the purpose of determining said boundaries. The State also concurrently filed a supplementary petition in a pending action between the State of California and the city, Action No. 649466, for the same purpose. In addition to the boundary line claim, the State asserts in each of said actions that certain lands, property, interests in property, and other things of value (which, together with the tidelands claimed are referred to as "litigated lands") held by the City of Long Beach are subject to the tideland trust and owned by the city in a trust capacity. Said actions have been consolidated for trial and are now pending in the Superior Court of the State of California, County of Los Angeles. The City of Long Beach is vigorously defending said actions and asserts various defenses against said claims of the State. The city also claims that the boundary line claim of the State is erroneous and improper and that it acquired and holds all of said litigated lands in its proprietary capacity and that it developed said litigated lands in its municipal capacity including the use of general tax revenues. Under existing circumstances, disposition of said litigation and determination of the respective rights of the State and of the city in the premises cannot be made except through the continuation of extensive, complicated, expensive, and time-consuming litigation, including possibly a lengthy court-supervised accounting. Certain proceeds from oil and gas production have been impounded and said impounded funds will remain in a condition of enforced idleness in the absence of a compromise. The continuation of the existing controversies between the State and the city is contrary to the best interests of the people of the State, including the inhabitants of the city. A purpose of statewide interest and benefit will be served by a compromise determination of the boundary line and a compromise determination of the respective rights and interests of the State and city in, and the status of, said litigated lands, together with the oil and

gas production from, and the use of, said litigated lands. Such determination will so fix and clarify the respective entitlement of the State and the city as to permit the early termination of the pending litigation by means of stipulations between the city and the State or dismissals, and so far as necessary or appropriate through the entry of court orders, decrees and judgments. Such a disposition of the litigation will bring about a closer cooperation between the people of the State of California and the City of Long Beach so that the time, efforts and money can be spent for urgently needed public purposes and avoid the public detriment incident to protracted litigation between the State and one of its major municipalities. Compromise of the litigation will also avoid the continuation of the collection of the considerable amount of the information, data, and surveys, which does not promote the best interests of the people of the State of California. It is essential to the public interest to resolve the uncertainty which exists as to the true location of the mean high tide line and as to the exact boundary line between the tide and submerged lands and lands owned by the city in its municipal capacity. It is not the purpose of the compromise hereby authorized to transfer any title but rather, by stipulation, to fix and establish a boundary which is presently uncertain and in doubt. For these, among other reasons, the Legislature finds and declares that the litigation should be compromised as provided in this act and that said compromise is fair, legal and equitable to both the State of California and the City of Long Beach.

Sec. 3. It is hereby ordered that the City of Long Beach and the State Lands Commission are to proceed to prepare a contractors' agreement and any other necessary contracts or agreements for the production of oil, gas and other hydrocarbons from the undeveloped portion of the Long Beach tidelands (or the estimated productive portion thereof), in accordance with good oilfield practice and prevention of land surface subsidence incident thereto.

Sec. 12. The first eleven million dollars ($11,000,000) of oil revenue and dry gas revenue payable to the State of California under this act each year shall be deposited in the California Water Fund.

* * * There are 26 more pages of the Act which we consider unimportant to the case at bar.

APPENDIX "I"

ENTERED
FEB. 4 1963
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(signature illegible)
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

LEWIS W. TWOMBLEY, Plaintiff, v. CITY OF LONG BEACH, a California Municipal Corporation; MURRAY T. COURSON, City Auditor of the City of Long Beach, California; THE STATE OF CALIFORNIA; and THE STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA, Defendants.	No. 62-1344-TC FINDINGS OF FACT AND CONCLUSIONS OF LAW; JUDGMENT OF DISMISSAL

The motions of the defendants for Judgment of Dismissal in the above entitled cause having been heard by the Court on November 19, 1962, Frank C. Aldrich of Ald-

rich and Hitt appearing as counsel for the plaintiff; Gerald Desmond, City Attorney, John C. Spence, Jr., and Philip J. Brady, Assistant City Attorneys, and Malcom E. Uptegraff, Deputy City Attorney, appearing as counsel for defendants City of Long Beach and Murray T. Courson, City Auditor of the City of Long Beach, and Stanley Mosk, Attorney General of the State of California, by Ernest E. Sanchez and Norman G. Taylor, Deputy Attorneys General, appearing as counsel for defendants State of California and State Lands Commission of the State of California, and the Court having heard oral argument and having examined the papers, pleadings and memoranda offered by the respective parties and having considered the record herein, and the cause having been submitted to the Court for decision, the Court being fully advised of the premises and having made an "Order Granting Defendants' Motion to Dismiss the Complaint," now makes its Findings of Fact and Conclusions of Law as follows

FINDINGS OF FACT

It is true that:

I

The lands which are the subject matter of this action are submerged lands within the municipal boundaries of the City of Long Beach.

II

The State of California by various statutory conveyances has granted the City of Long Beach title subject to certain terms, trusts and conditions, to the tide and submerged lands within the city's municipal limits, including the lands which are the subject matter of this action. (Cal. Stats. 1911, p. 1304, amended by Cal. Stats. 1925, p. 235, Cal. Stats. 1935, p. 793, and Cal.Stats. 1951, p. 2443.)

III

* * * * * * *

The following Conclusions of Law insofar as they may be considered Findings of Fact are found by this Court to be true in all respects.

From these and the foregoing facts the Court concludes:

CONCLUSIONS OF LAW

I

That the City of Long Beach holds title to the tide and submerged lands within its municipal limits, including the lands which are the subject matter of this action, and the proceeds therefrom subject to certain terms, trust, and conditions imposed by the law of the State of California (Cal. Stats. 1911, p. 1304, amended by Cal. Stats. 1925, p. 235, Cal. Stats. 1935, p. 793 and Cal. Stats. 1951, p. 2443).

II

That the Submerged Lands Act of 1953 (67 Stats. 1953 ch. 31, 43 U.S.C. § 1301, et seq.) confirms the statutory conveyances of title in trust (Cal. Stats. 1911, p. 1304, amended by Cal. Stats. 1925, p. 235, Cal. Stats. 1935, p. 793 and Cal. Stats. 1951, p. 2443) made by the State of California to the City of Long Beach to the tide and submerged lands within the City's municipal limits, including the lands which are the subject matter of this action.

III

That the City of Long Beach is not the unrestricted owner in fee of the lands which are the subject matter of this action.

IV

That plaintiff is not entitled to an injunction, permanent or otherwise, restraining defendants City of Long

Beach and Murray T. Courson, City Auditor of the City of Long Beach, and each of them and their respective agents, servants and employees from paying or otherwise transferring to defendants State of California and/or the State Lands Commission of the State of California any sums obtained by the City of Long Beach from the recovery of gas, oil, hydrocarbons or other minerals, or from the letting of any contract for the development of oil, gas, or other hydrocarbons from or in the lands which are the subject matter of this action whether such sums be received by the City of Long Beach as royalties, as proceeds of the sale of gas, oil, hydrocarbons or other minerals, as advance payment of royalties or lease bonus or otherwise.

V

That plaintiff is not entitled to a decree declaring or adjudging that defendant City of Long Beach is the owner in fee without restriction, condition, or limitation of the lands which are the subject matter of this action nor that defendant City of Long Beach has full and complete right or title to said lands nor complete right to use for any purpose within its corporate powers without restriction, condition or limitation, any or all revenues obtained from gas, oil or other hydrocarbons now or hereafter extracted from the lands which are the subject matter of this action.

VI

That the plaintiff has stated no cause of action against any of the named defendants.

VII

That the plaintiff is not entitled to any of the relief prayed for in his complaint.

VIII

That findings having been made upon issues which are determinative of the cause, any further findings upon issues other than those embraced in the foregoing findings would be immaterial and are not made for that reason.

JUDGMENT

In accordance with the foregoing Findings of Fact and Conclusions of Law,

IT IS ORDERED, ADJUDGED AND DECREED that the motions for judgment of dismissal filed on behalf of the respective defendants be and the same are hereby granted and defendants are discharged with their costs in the sum of $_____.

DATED: This 1 day of Feb., 1963.

/s/ Thurmond Clarke
THURMOND CLARKE
United States District Judge

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IN THE

Supreme Court of the United States

October Term, 1964
No. 517

LEWIS W. TWOMBLEY,

Petitioner,

vs.

CITY OF LONG BEACH, a California municipal corporation; MURRAY T. COURSON, City Auditor of the City of Long Beach, California; STATE OF CALIFORNIA; and THE STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for Respondents State of California and the State Lands Commission of the State of California in Opposition

Opinion Below

The opinion of the United States Court of Appeals for the Ninth Circuit is reported in 333 F.2d 685 [Advance Sheet No. 3 dated August 31, 1964], and said opinion is set forth in Appendix "A" of Petitioner's Brief.

Jurisdiction

Petitioner seeks to invoke the jurisdiction of this Court by writ of certiorari under the powers of review conferred by 28 U.S.C. 1254(1) (1958).

The basis for federal jurisdiction urged by petitioner in the United States District Court for the Southern District of California was the interpretation of the Submerged Lands Act, 67 Stat. 29 (1953), 43 U.S.C. §§ 1301-15 (1958), a federal question. 28 U.S.C. 1331 (1958).

Question Presented

As stated in the opinion of the United States Court of Appeals for the Ninth Circuit:

> "The question presented by this appeal [currently by the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit] is whether the City of Long Beach, California, holds fee title to the submerged lands (lands covered by navigable non-tidal waters) within its boundaries, free from any right in the State of California."*

Two. ibley v. City of Long Beach, 333 F.2d 685, 686 (1964).

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*Petitioner's statement (Petition, page 2) that "The question presented is a controversy between the State of California and the City of Long Beach . . ." is incorrect. The City of Long Beach has joined the State of California in opposing Petitioner's position at every stage of these proceedings, and has authorized the State to represent to this Court that the City concurs in the State's opposition to the present Petition for Writ of Certiorari.

Summary of Argument

By a series of statutory grants commencing in 1911, the State of California granted to the City of Long Beach all of the tidelands and submerged lands within the boundries of that municipality. Each of those legislative grants to the City was made *in trust* for specified uses and purposes and upon certain conditions.

To the extent it is arguable that such lands are outside the State's inland waters, title to the submerged lands so granted to the City of Long Beach, along with that of all submerged lands within the State, was affected by the federal-state conflict over ownership and control of such lands. *United States v. California,* 332 U.S. 804, 805 (1947); *United States v. Louisiana,* 363 U.S. 1, 6 n. 4 (1950).

The conflict was resolved, in 1953, by Congressional enactment of the Submerged Lands Act which recognized, confirmed, established, vested and assigned to the States and their grantees title to the submerged lands within the States' boundaries, according to State law. 67 Stat. 29, 30-31, §§ 3-4 (1953), 43 U.S.C. §§ 1301, 1311-12 (1958). Said Act specifically refers to municipal grantees (among others) and immediately thereafter provides:

> ". . . That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign. . . ." 67 Stat. 29, § 2(d), 43 U.S.C. § 1301(d) (1958).

California decisions construing California statutes establish beyond question that the City of Long Beach holds title to its submerged lands in trust for the people of the State subject to certain terms, restrictions and conditions. *Infra,* pp. 6-9. Consequently, petitioner, contrary to the express provisions of the Submerged Lands Act, is seeking to establish that said act conferred upon the City greater rights and interests than those set forth in the City's grants from the State. Furthermore, petitioner, while admitting that the City's claim is entirely dependent upon the State grants, nevertheless insists that the conditions of trust contained in these conveyances be deleted.

Petitioner's contention that Legislative modifications of the original State grants are invalid cannot be sustained. The State may lawfully change or amend rights of a municipality where such rights were given by the State to the municipality for governmental purposes. Therefore, changes of the trust relationship between the City of Long Beach and the State were lawful. *Infra,* pp. 15-16.

Finally, petitioner's suggestion, for the first time in these proceedings, that the restrictions and conditions in the original grant of the State to the City of Long Beach are void because not specifically referred to in the statutory title is unavailing. This contention involves purely a question of State law not raised in the proceedings below. Even if this Court were to con-

sider the question so raised by petitioner, it can be shown beyond question that the State constitutional provision relied upon by petitioner with regard to the title of the State Legislative grant of 1911 has been fully complied with.

Petitioner has not presented an important question of federal law which requires settlement by this Court. Further, petitioner has not shown any conflict between the opinion of the Court of Appeals and decisions of this Court. Consequently, it is respectfully submitted that this is an inappropriate case for the granting of certiorari.

ARGUMENT

Preliminary Statement

This taxpayer's suit by petitioner has as its purpose the alteration of the presently existing relationship between the State of California and the City of Long Beach as to the tide and submerged lands now held by the City. The precise nature of this relationship requires some explanation.

By successive statutory conveyances in 1911, 1925 and 1935, the State of California granted to the City of Long Beach all the tidelands and submerged lands within the limits of the City, "in trust" for the promotion of commerce and navigation. Cal.Stat. 1911, ch. 676, p. 1304, amended by Cal.Stat. 1925, ch. 102, p. 235, Cal.Stat. 1935, ch. 158, p. 793, and Cal.Stat. 1951, 3d Ex. Sess., ch. 915, p. 2443. Copies of the 1911, 1925 and 1935 statutes appear as Appendices "D," "E," and "F," respectively, to the Petition herein.

Section 1 of the 1911 grant, in part, provides:

> ". . . There is hereby granted to the city of Long Beach, a municipal corporation of the State of California, and to its successors, all the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all the tide lands and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, *in trust for the uses and pur-*

poses, and upon the express conditions following, to wit:

"(a) That said lands shall be used by said city and by its successors, solely for the establishment, improvement and conduct of a harbor. . . ." Cal. Stat. 1911, ch. 676, pp. 1304-05 (Emphasis added.)

Although the specific trust purposes were somewhat modified, similar terminology is found in section 1 of the 1925 and 1935 Legislative grants. In each instance the unequivocal language of the grant conveys only a trust title to the City for designated purposes.

In a long and consistent line of cases, the California courts have repeatedly adjudicated that the effect of these statutory conveyances was to vest the municipal grantee with a mere legal title as trustee for the people of the State for governmental purposes. *City of Long Beach v. Lisenby,* 175 Cal. 575, 579, 166 Pac. 333, 336 (1917); *City of Long Beach v. Marshall,* 11 Cal. 2d 609, 614, 82 P.2d 362, 364 (1938); *City of Long Beach v. Morse,* 31 Cal. 2d 254, 262, 188 P.2d 17, 19-20 (1947); *Trickey v. City of Long Beach,* 101 Cal. App.2d 871, 878-879, 226 P.2d 694, 699 (1951); *Mallon v. City of Long Beach,* 44 Cal.2d 199, 205, 282 P.2d 481, 484-485 (1955); *People v. City of Long Beach,* 51 Cal.2d 875, 877-878, 338 P.2d 177, 178 (1959); *City of Long Beach v. Vickers,* 55 Cal.2d 153, 157-158, 358 P.2d 687, 690 (1961); *People v. City of Long Beach,* 200 Cal.App.2d 609, 611, 614-615, 19 Cal.Rptr. 585, 588 (1962).

By virtue of the aforementioned statutory grants, it was held that the City was empowered to drill for, extract, and dispose of any oil, gas, and other hydro-

carbon substances discovered on these tidelands and submerged lands owned by it. *City of Long Beach v. Marshall,* 11 Cal.2d 609, 620, 82 P.2d 362, 367 (1938). Subsequently, the case of *City of Long Beach v. Morse,* 31 Cal.2d 254, 261-262, 188 P.2d 17, 22 (1947) established that because the City's ownership of tide and submerged lands was that of a trustee, all income or moneys derived by the City from the sale of oil, gas and other hydrocarbon substances produced from these lands were trust funds and could be used only in furtherance of trust purposes and not for general municipal purposes unconnected with the trust purposes.

In 1951 the California Legislature adopted a statute (Cal.Stat. 1951, ch. 915, p. 2443) declaring that half of the Long Beach oil revenue and all the dry gas revenue derived from these tide and submerged lands were no longer required for the public trusts specified in the granting statutes, and freeing these revenues from trust. In *Mallon v. City of Long Beach,* 44 Cal.2d 199, 212-213, 282 P.2d 481, 489 (1955), the California Supreme Court held that the 1951 statute operated as a revocation of the trust as to these surplus revenues and that the City of Long Beach held, and would in the future receive, half the oil revenue and all the dry gas revenue as "resulting trustee" for the State of California.

The State of California then brought suit for an accounting and payment to it of the oil and gas revenues freed from trust by the 1951 statute. *People v. City of Long Beach,* Los Angeles Superior Court No. 649466 (Sept. 1955). Following an authorization by the California Legislature in chapter 29, California

Statutes of 1956, First Extraordinary Session (Appendix "G" of the Petition herein), a compromise and settlement was negotiated between the City and the State, and implemented by a stipulated Decree and Judgment in the aforesaid case of *People v. City of Long Beach, supra.* The trust relationship between the City and the State, and the division of trust revenues were further modified by chapter 138, Cal.Stat. 1964, 1st Ex.Sess., portions of which are set forth in Appendix "H" of the Petition herein, where it is referred to as "Senate Bill No. 60."

It is the aforedescribed trust relationship between the State of California and the City of Long Beach, carefully created by the California Legislature and judicially defined by California courts, which petitioner seeks to overthrow.

I

The Submerged Lands Act Confirms, but Neither Enlarges nor Diminishes, the Title of the States and Their Grantees in Offshore Lands in Accordance With State Law, and Cannot Be Construed so as to Convert a Trust Title to a Beneficial Title

The basic premise of petitioner's argument herein is that the Submerged Lands Act transformed grants made by the State of California to the City of Long Beach of the submerged lands within the boundaries of that city from conveyances in trust to conveyances in fee simple absolute, free of any trust restrictions imposed by the grants of those lands. It is petitioner's position that prior to the enactment of the Submerged Lands Act, California had no title to the submerged lands so conveyed. With the passage of that act, peti-

tioner contends that a fee simple absolute title was created in the City of Long Beach and that all terms, conditions and restrictions in the grants to the State's grantees were removed. Petition pp. 8-10. This contention is made despite the specific language of the Act:

> ". . . That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign. . . ." 67 Stat. 29 § 2(d) (1953), 43 U.S.C. § 1301(d) (1958)

Numerous attempts of Congress to resolve the conflicts between the federal and state governments over their respective rights in tide and submerged lands culminated in the passage of the Submerged Lands Act of 1953. *United States v. Louisiana,* 363 U.S. 1, 6 n. 4 (1950). Petitioner's argument that the State of California had no title to the submerged lands granted to Long Beach in 1911, and that this affects the present title of the City (Petition p. 8), completely ignores the historic background and purpose of the Submerged Lands Act. This basic purpose was pointed out to the Senate by the Act's author, Senator Holland, who stated:

> "The truth is that Senate Joint Resolution 13 [which became the Submerged Lands Act] simply restores or gives back to the States the submerged lands within their historic boundaries which they have possessed, used and developed in good faith for over 100 years. *It confirms the property to the same people who have always owned and used it.*" 99 Cong. Rec. 4361. (Emphasis added.)

The effect of the statute had been previously emphasized by the floor manager of the Act, Senator Cordon, who stated:

> ". . . The language [of Section 4] thereby validates all the States have done in transferring to their citizens portions of land in this area." 99 Cong. Rec. 2697.

The Submerged Lands Act clearly and unmistakably implements the Congressional intent to validate all grants of submerged lands made by the States prior to 1953, but to create no greater rights or interests than those created by the grants themselves. The purpose of the Act is set forth in its preamble:

> "To confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters. . . ." 67 Stat. 29 (1953).

"[L]ands beneath navigable waters" in section 2 of the Act are so defined as to include all possible categories of submerged lands, including lands beneath the inland waters and lands beneath the marginal sea. 67 Stat. 29 (1953), 43 U.S.C. § 1301 (1958).

Section 3 of the Act reads in part as follows:

> "Sec. 3. Rights of the States.—
>
> "(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources *all in accordance with applicable State*

law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto *under the law of the respective States in which the land is located,* and the respective grantees, lessees, or successors in interest thereof;

"(b)(1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources. . . ." 67 Stat. 29, 30 (1953), 43 U.S.C. § 1311 (1958). (Emphasis added.)

This section establishes beyond question that the titles confirmed by the Act are in accordance with state law.

Section 2(d) of the Act recites:

"(d) The terms 'grantees' and 'lessees' include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however, That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants*

from the State, or its predecessor sovereign. . . ." 67 Stat. 29 (1953), 43 U.S.C. § 1301(d) (1958). (Emphasis added after "*Provided, however,*".)

Section 2(d) clearly discloses congressional concern with the effect of the Submerged Lands Act upon the rights and interests of the State's municipal grantees, and specifies that these cannot be "greater" than as described in the State legislative grants.

The meaning of the statute is clear: Long Beach can only hold whatever lands are claimed under the Act by virtue of the City's status under State law. The quitclaim or relinquishment by the United States is to the State or to the persons who on June 5, 1950, were entitled to lands under the law of the respective states in which the lands were located. The statutes and case law of California, already cited (*supra*, pp. 6-9), establish without doubt that on June 5, 1950, and at all times prior thereto, the relevant State law was that Long Beach held the lands described as a trustee for the State of California. The only grants the City received from the State were in trust and the State retained its rights as settlor-beneficiary of the granted lands. At no time did the State ever part with any right to modify or revoke the trust.

The proposition that the Submerged Lands Act specifically incorporates State law, and that its effect is to recognize and reinforce that law, not to displace it, is fully supported by judicial decisions. In *Superior Oil Co. v. Fontenot*, 213 F.2d 565 (5th Cir. 1954), *cert. denied* 348 U.S. 837, a plaintiff oil company challenged the right of the State of Louisiana to impose a mineral severance tax on certain oil produc-

tion which occurred on tide or submerged lands between the time of the decision of the United States Supreme Court in *United States v. California*, 332 U.S. 19 (1947), and the passage of the Submerged Lands Act of 1953. The oil company contended that until the Submerged Lands Act was passed, the State had no title to the lands in question and thus had no right to tax production from such lands. In essence this is the basic legal argument of plaintiff here. Rejecting this contention and construing the meaning of the Submerged Lands Act, the court stated:

> ". . . they [the State and its lessees] must be held, notwithstanding the opinion of the Supreme Court [referring to *U.S. v. California supra*], to have always and at all times had the title and right of possession, or, if the passage of Public Law 31 . . . is to be regarded as then conferring title on them, this title, by the very terms of the Act declaring and establishing it, related back so as to confirm and maintain the possession and title of State and lessee as good from the beginning." *Superior Oil Co. v. Fontenot, supra*, 213 F.2d at p. 569.

See also: *United States v. State of Louisiana, et al.*, 363 U.S. 1, 16-25 (1950); *Justheim v. McKay*, 123 F. Supp. 560, 566-567 (D.C.C. 1954), *affirmed* 229 F.2d 29, *cert. denied*, 351 U.S. 933; *People v. Hecker*, 179 Cal.App.2d 823, 836-837, 4 Cal.Rptr. 334, 342-343 (1960).

Clearly, then, the City of Long Beach has only such title under the Submerged Lands Act as it can claim under State law. As succinctly put by the trial judge

below in his order granting respondent's motion to dismiss:

> "3) The motion to dismiss on the ground that plaintiff fails to state a cause of action is well taken. Plaintiff's technical arguments fails to answer the point repeatedly made by defendants that Congress intended by the Submerged Lands Act to 'confirm' whatever conveyances of title which the States had already made; Plaintiff cannot rely on the statutory conveyances made to Long Beach while, at the same time, insisting that the conditions of trust contained in the conveyances be deleted." Tr. of Record, p. 113.

II

The State of California Is Not Precluded by Law From Changing or Altering the Statutory Trusts Which Exist With Respect to the Subject Lands

Petitioner additionally contends that the State cannot vary the terms and conditions of the State grants. He bases this contention on the grounds that such changes are ". . . a violation of the Constitution of the United States, the Constitution of the State of California, the laws of the United States and the laws of the State of California to attempt to take from a city its property without any compensation whatsoever therefor. . . ." Petition, p. 10.

The law of California and the decisions of this Court clearly refute any suggestion that the rights of the City of Long Beach have been impaired. As was

previously noted, repeated California decisions have held that the City of Long Beach holds these lands in trust for the governmental purposes set forth in the state grants. *Supra*, pp. 6-9. As pointed out in *Mallon v. City of Long Beach, supra*, 44 Cal.2d 199, 209, 282 P.2d 481 (1955), it is settled that the State, acting in its governmental capacity, has the power to alter the contractual or property rights of a municipality where those rights were given by the State to the municipal corporation for a governmental purpose. This proposition is amply sustained by decisions of this Court.

Railroad Com. v. Los Angeles R. Corp., 280 U.S. 145, 156 (1929);

Trenton v. New Jersey, 262 U.S. 182, 188, 191-192 (1922);

Pawhuska v. Pawhuska Oil and Gas Co., 250 U.S. 394, 398-399 (1918);

Hunter v. Pittsburgh, 207 U.S. 161, 178-179 (1907).

Thus, whatever rights the City of Long Beach has are subject to the exercise of the reserved powers of the State. Petitioner has no valid complaint because the State thereafter exercised the powers reposed in it by law.

III

The Question as to the Sufficiency of the Title of the 1911 Grant Is Improperly Raised for the First Time at This Stage of These Proceedings, and, in Any Event, Said Title Is Sufficient

Petitioner, for the first time in this case, contends that the terms and conditions set forth in the 1911 statutory grant by the California Legislature are void under the State's Constitution because they were not enumerated in the title of the statute. Petition, pp. 12-16.

A. An Issue Not Raised in the Proceedings Below and Involving a State Constitutional Question Not Passed Upon by the State Courts Will Not Be Considered by This Court on a Petition for Certiorari

Before disposing of the merits of this contention, two rules of this Court should be noted. The first rule is that a point raised for the first time in the petition for certiorari will not be considered. *Hekering v. Minnesota Tea Co.*, 296 U.S. 378, 380 (1935). The second is that this Court ". . . will not pass upon the constitutionality of a state statute before the state courts have had an opportunity to do so. . . ." *Adler v. Board of Education*, 342 U.S. 485, 496 (1952). Neither the courts below nor the State courts have had an opportunity to pass upon this contention. Therefore, it is respectfully submitted that under the Court's rules it would be inappropriate to consider the point at this time.

B. The Trust Provisions of the 1911 Statutory Grant Were Embraced by the Statute's Title

Even if considered by the Court, petitioner's contention is without merit.

Article IV, section 24 of the California Constitution provides:

> ". . . Every act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in its title, such act shall be void only as to so much thereof as shall not be expressed in its title."

The California Supreme Court has recently stated:

> "Section 24 of article IV must be construed liberally so as to uphold legislation all parts of which are reasonably germane, and a provision which is auxiliary to and promotive of the main purpose of the act or has a necessary and natural connection with that purpose is germane within this rule. Provisions governing projects so related and interdependent as to constitute a single scheme may be properly included within a single act, and the general purpose of a statute being declared, the details provided for its accomplishment will be regarded as necessary incidents. (Perry v. Jordan, 34 Cal.2d 87, 92-93 [207 P.2d 47].)
>
> ". . .
>
> ". . . Under Section 24 of article IV 'the title of an act need not embrace an abstract or catalog of its contents, but need only contain a reasonable intimation of the matters under legislative consideration.' (Harris v. Fitting, 9 Cal.2d 117,

120 [69 P.2d 833]; Heron v. Riley, 209 Cal. 507, 510 [289 P. 160].). . . ."

Metropolitan Water District v. Marquardt, 59 Cal.2d 159, 172-174, 379 P.2d 28, 34-35 (1963).

To similar effect is *People v. Sterling Refining Co.*, 86 Cal.App. 558, 566-67, 261 Pac. 1080, 1084 (1927), cited by petitioner. Petition p. 14. These California decisions are entirely consistent with this Court's construction of similar constitutional provisions from other States. *Utah Power and Light Co., v. Pfost*, 286 U.S. 165, 186-188 (1932); *International Shoe Co. v. Shartel*, 279 U.S. 429, 434 (1929).

The 1911 statutory grant to the City of Long Beach relates to one subject only, the granting of certain lands to the City. As demonstrated by the foregoing decisions, it was unnecessary for the State legislature to list each term and condition of the grant. There can be no question but that the terms upon which a Legislative grant is made are "reasonably germane" to such grant and have "a necessary and natural connection" with the purpose thereof. Thus, petitioner's contention that the act is void as to the conditions and terms of the grant because not referred to in the title thereof is unavailing.

Conclusion

As stated by this Court's rules,

"A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. . . ." Supreme Court Rule 19.

Respondents submit that no "special and important" reason has been presented to this Court for its review of the District Court of Appeal's decision in this case. No ambiguity exists concerning the extent of title confirmed and recognized in State grantees by the Submerged Lands Act. The Act has been applied by the court below literally and in accord with Congressional intent. There is no contrary interpretation of the Act by another court.

It is therefore respectfully requested that this court deny the petition for certiorari.

Respectfully submitted,

THOMAS C. LYNCH,
Attorney General,

JAY L. SHAVELSON,
Assistant Attorney General,

N. GREGORY TAYLOR,
Deputy Attorney General,

Attorneys for Respondents State of California and State Lands Commission of the State of California.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 517

LEWIS W. TWOMBLEY, PETITIONER

v.

CITY OF LONG BEACH, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO REQUEST FOR CONSOLIDATION

Petitioner, as a citizen, resident, and taxpayer of the City of Long Beach, California, filed a complaint against the City, the State, and officials of both, to establish that the City's ownership of tide and submerged lands within the city limits is not subject to any trust imposed by the State, and to enjoin payment to the State of any part of the income derived from such tide or submerged lands. See Pet. App. The district court dismissed the complaint for

failure to state a cause of action (Pet. App. xxxi-xxxv), and the court of appeals affirmed (Pet. App. i-vii). Petitioner now seeks a writ of certiorari to review the judgment of the court of appeals, and also asks that the case be consolidated with *United States* v. *California*, No. 5, Original (Pet. 17).

The United States is not a party to No. 517 and is in no way concerned with any issue involved in that case. Therefore we take no position as to whether a writ of certiorari should be granted. However, the United States does oppose the request for consolidation of this case with No. 5, Original.

The only ground for consolidation of cases under Rule 42(a) of the Federal Rules of Civil Procedure and Rule 9(2) of this Court, or for consolidated argument under Rule 43(5) of this Court, is the presence of a common question of law or fact. Petitioner does not point out, and we are unable to discover, any controverted question of law or fact common to No. 517 and No. 5, Original.

United States v. *California*, now No. 5, Original, was brought by the United States to establish its right, as against the State of California, to the submerged lands and resources lying within a distance of three geographical miles seaward from the line of ordinary low water and from the outer limit of inland waters along the California coast. After that right was sustained by this Court in 1947 (332 U.S. 19), proceedings were had before a Special Master to define more particularly the line of ordinary low water and the outer limit of inland waters from which the three miles should be measured. The Spe-

cial Master's Report was received by the Court on November 10, 1952 (344 U.S. 872), and in January 1953 both parties filed exceptions to it. Then on May 22, 1953, the President approved the Submerged Lands Act, giving to California or its grantees the submerged lands and resources within three geographical miles seaward from the line of ordinary low water and from the outer limit of inland waters. 67 Stat. 29, 43 U.S.C. 1301-1315. No further judicial action was taken in the case until 1963, when the United States sought and secured (375 U.S. 927) leave to file a supplemental complaint, asserting its right to the submerged lands more than three geographical miles seaward from the line of ordinary low water and from the outer limit of inland waters, essentially the same line that had been in issue before the Special Master. California has answered the supplemental complaint, both parties have filed new exceptions to the Special Master's Report, with supporting and opposing briefs, and on June 22, 1964, the Court granted their joint motion for oral argument on those exceptions (377 U.S. 986). The issues on that argument will be the location of the boundary between the submerged lands and resources retained by the United States and those given to the State or its grantees by the Submerged Lands Act, and California's contention that the Special Master's Report is not an appropriate basis on which to proceed under the supplemental complaint.

On the other hand, No. 517 concerns only the relative rights of the State of California and the City of Long Beach in the tide and submerged lands within

the city limits. The city limits of Long Beach are three miles seaward from the line of ordinary high tide (Pet. App. x). By the Submerged Lands Act the United States relinquished the submerged lands within three miles of the line of ordinary low water (which of course is seaward of the line of high tide) or within three miles of the outer limit of inland waters. Secs. 2, 3, 67 Stat. 29-30, 43 U.S.C. 1301, 1311. The entire waterfront of Long Beach lies within the Long Beach breakwater, which the United States has conceded marks the outer limit of inland waters within the meaning of the Submerged Lands Act. See U.S. Coast & Geodetic Survey Chart No. 5148; Amended Exceptions of the United States (No. 5, Orig.), p. 17. Thus, under no view can the area concerned in No. 517 even touch the area disputed in No. 5, Original. No. 517 raises no questions as to the location or boundaries of the areas granted or retained by the United States under the Submerged Lands Act. It concerns only the question of whether or to what extent the City or the State is the true recipient, in view of applicable State law, of rights that the United States relinquished by the Submerged Lands Act "to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States." Sec. 3(a), 67 Stat. 30, 43 U.S.C. 1311(a).[1]

---

[1] The issues in No. 517 have been brought before the Court in No. 5, Original, by two *amicus curiae* briefs filed by Mr. Carl Whitson. (Presumably one of these is the brief referred to at page 17 of the Petition in No. 517 as having been filed by the petitioner.) Both the United States and the State of

Since there is no question of law or fact common to the two cases, there is no basis for consolidation. Even if some common question could be found, consolidation of the two cases should be denied. The legal and factual issues in No. 5, Original, are so complicated that the Court, by its order of June 22, 1964, has allowed each party two hours for oral argument. It would be undesirable to complicate the situation further by interjecting into the same argument the fundamentally different questions presented by No. 517.[2]

For the foregoing reasons, the request to consolidate No. 517 with No. 5, Original, should be denied.

Respectfully,

ARCHIBALD COX,
Solicitor General.

ROGER P. MARQUIS,
GEORGE S. SWARTH,
Attorneys.

OCTOBER 1964.

California have expressed the view that these issues are irrelevant to that case. See Memorandum for the United States in Opposition to Motion for Leave To File Petition in Intervention (No. 5, Orig.), p. 4; State of California's Response to Amicus Curiae Brief Heretofore Filed by Carl Whitson, etc. (No. 5, Orig.).

[2] Furthermore, if petitioner actually seeks consolidation of the two cases, rather than mere combined argument, the procedural difficulties of consolidating an appellate case with an original one seem in themselves sufficient to defeat the suggestion.

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In the
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1964

No. 517

LEWIS W. TWOMBLEY,
Petitioner,

VERSUS

CITY OF LONG BEACH, a California municipal corporation; MURRAY T. COURSON, City Auditor of the City of Long Beach, California; STATE OF CALIFORNIA; and THE STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA,
Respondents.

PETITION FOR REHEARING AND RECONSIDERATION

LEWIS W. TWOMBLEY, *Petitioner*

JOHN B. OGDEN
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Attorney for Petitioner

November, 1964.

UTTERS TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-8750

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In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 517

LEWIS W. TWOMBLEY,
Petitioner,

VERSUS

CITY OF LONG BEACH, a California municipal corporation; MURRAY T. COURSON, City Auditor of the City of Long Beach, California; STATE OF CALIFORNIA; and THE STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA,
Respondents.

PETITION FOR REHEARING AND RECONSIDERATION

The Petitioner in this cause most respectfully requests the Court to reconsider its Order denying certiorari herein for the following reasons:

STATEMENT

The Petition presents the question as to whether or not the Tidelands and Submerged Lands involved belong under the Submerged Lands Act to the City of Long Beach or to the State of California.

The pertinent facts are that in 1911 the State of California granted to the City of Long Beach the Tidelands

and Submerged Lands of the State of California within the boundaries of said City. Thereafter, various legislative acts were passed, including an Act in 1964 as shown by the Appendix to Petition for Certiorari and the Petition itself.

The Supreme Court of California in *City of Long Beach, et al.* v. *Marshall (People, Intervenor)*, found in 82 P.2d 362, and held that the property involved belonged to the City of Long Beach without restrictions or reservations. Since all parties involved were parties to that litigation, petitioner most respectfully feels that the same constituted *res adjudicata* and that the Legislature was without power thereafter to determine by legislative act that the property belonged to the State of California.

Petitioner's argument in this regard is based on the general Law of Estoppel by judgment or *res adjudicata*, and calls attention of this Court to the case of *Tait, Collector of Internal Revenue* v. *Western Maryland R. R. Co.*, found in 53 S.Ct. 706, 289 U.S. 620, 17 L.Ed. 1405; and *Lone Ranger, Inc.* v. *Cox, et al.*, 124 F.2d 650; *White, et al.* v. *Sinclair Prairie Oil Co.*, 139 F.2d 103. Under any theory, as we view it, the title vested in the City of Long Beach without restrictions or reservations.

The Petitioner further shows to the Court as a reason for reconsideration of his Petition, that even if the Court should find that under the Submerged Lands Act the title vested in the State of California, the State of California is estopped from asserting title as against the City of Long Beach by reason of the After Acquired Title provisions of the Law, which in effect hold that if the grantor did not have title at the time of the grant, as is the case here, then if title is thereafter acquired it passes under the

grant. See: C.J.S., Vol. 31, Articles 21-22, 25-29; and *Hooks v. Canadian Holding Co., et al.*, 133 Okla. 275, 272 Pac. 366, *cert. denied* 49 S.Ct. 347, 279 U.S. 850, 73 L.Ed. 993. In the last cited case there was involved the question of After Acquired Title of purchaser of allotted lands of Choctaw and Chickasaw Nations, and the Court held that the after acquired title inured to the benefit of the purchaser by way of estoppel. There the title was in the Chickasaw and Choctaw Nations at the time of the conveyance. Here the title was in the United States at the time of the Grant in 1911.

It would seem wholly unfair and inequitable to permit the State of California to make the Grant and the City make the improvements and spend the money of the taxpayers, and then when oil is discovered, by legislative act in violation of the Due Process Clause of the Constitution, take from the City that which it owns.

We therefore most respectfully petition and ask this Honorable Court to reconsider its Order denying Certiorari herein and grant Certiorari.

Respectfully submitted,

LEWIS W. TWOMBLEY, *Petitioner*

By _____

JOHN B. OGDEN
1408-1411 Liberty Bank Building
Oklahoma City, Oklahoma
Attorney for Petitioner

CERTIFICATE OF COUNSEL

This is to certify that this Petition for Rehearing and Reconsideration is filed in good faith and not for the purpose of delay.

JOHN B. OGDEN

CERTIFICATE

I certify that I mailed a true and correct copy of this PETITION FOR REHEARING AND RECONSIDERATION to Thomas C. Lynch, Attorney General, Jay L. Shavelson, Assistant Attorney General, N. Gregory Taylor, Deputy Attorney General, 600 State Building, Los Angeles, California, attorneys for respondents State of California and State Lands Commission of the State of California, and to Archibald Cox, Solicitor General and Roger P. Marquis, George S. Swarth, attorneys, Department of Justice, Washington, D. C., on this the _____ day of November, 1964, by depositing the same in the United States Mail with sufficient postage affixed thereon.

JOHN B. OGDEN